

Federal courts must engage in a preliminary screening of cases in which prisoners

1 seek redress from a governmental entity or officer or employee of a governmental entity.
 2 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the
 3 complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or
 4 fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a
 5 defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be
 6 liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.
 7 1990).

8 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement
 9 of the claim showing that the pleader is entitled to relief." "Specific facts are not
 10 necessary; the statement need only "give the defendant fair notice of what the . . . claim
 11 is and the grounds upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200
 12 (2007) (citations omitted). Although in order to state a claim a complaint “does not need
 13 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his
 14 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
 15 recitation of the elements of a cause of action will not do. . . . Factual allegations must
 16 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
 17 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
 18 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
 19 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
 20 699 (9th Cir. 1990).

21 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:
 22 (1) that a right secured by the Constitution or laws of the United States was violated, and
 23 (2) that the alleged violation was committed by a person acting under the color of state
 24 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

25 LEGAL CLAIMS

26 Plaintiff alleges that Defendants, police officers in the San Francisco Police
 27 Department, arrested him for violating a restraining order. Plaintiff alleges that he was
 28 falsely arrested, in violation of his constitutional rights, because he had not been properly

1 served with the restraining order. He seeks money damages.

2 The United States Supreme Court has held that to recover damages for an
3 allegedly unconstitutional conviction or imprisonment, or for other harm caused by
4 actions whose unlawfulness would render a conviction or sentence invalid, a section
5 1983 plaintiff must prove that the conviction or sentence has been reversed on direct
6 appeal, expunged by executive order, declared invalid by a state tribunal authorized to
7 make such determination, or called into question by a federal court's issuance of a writ of
8 habeas corpus. *Heck v. Humphrey*, 114 S. Ct. 2364, 2372 (1994).

9 *Heck* applies even if Plaintiff has not yet been convicted for violating the
10 restraining order because it applies to claims arising out of pending charges. *Heck* bars
11 claims which necessarily implicate the validity of pending criminal charges. *See*
12 *Alvarez-Machain v. United States*, 107 F.3d 696, 700-01 (9th Cir. 1997). A civil claim
13 which necessarily implicates the validity of pending criminal charges does not accrue
14 until after one has succeeded in the criminal realm. *Id.* (citing *Heck*). More specifically,
15 Plaintiff's claim of false arrest is barred until the charges, or subsequent conviction, have
16 been invalidated. *See Cabrera v. City of Huntington Park*, 159 F.3d 37, 380 (9th Cir.
17 1998) (*Heck* barred plaintiff's false arrest and imprisonment claims until conviction was
18 invalidated); *Smithart v. Towery*, 79 F.3d 951, 952 (9th Cir. 1996) (*Heck* barred
19 plaintiff's claims that defendants lacked probable cause to arrest him and brought
20 unfounded criminal charges against him). Therefore, Plaintiff's claim of false arrest is
21 not cognizable claim under section 1983 and must be dismissed without prejudice to
22 refiling once the claims accrue.

23 Plaintiff also makes a conclusory allegation of excessive force. In order to state a
24 cognizable claim, plaintiff must plead more than mere labels and conclusions, he must
25 also plead the facts that show the grounds for his entitlement to relief. *See Bell Atlantic*
26 *Corp. v. Twombly*, 550 U.S. 544, 553-56 (2007); *see also Barren v. Harrington*, 152 F.3d
27 1193, 1194 (9th Cir. 1998) (even at the pleading stage, "[a] plaintiff must allege facts,
28 not simply conclusions, that show that an individual was personally involved in the

1 deprivation of his civil rights."). Plaintiff does not allege what force was used or by
2 whom, the circumstances under which the force was used, the degree to which he was
3 resisting the officers, any specific injuries he suffered, or what actions any of the
4 Defendants took in applying the force. As Plaintiff has already been granted leave to
5 amend his complaint twice but has still failed to properly state a claim, further leave to
6 amend will not be granted.

7 CONCLUSION

8 For the foregoing reasons, this action is DISMISSED without prejudice. The
9 motion for leave to amend (docket number 12) is GRANTED. The Clerk shall process
10 the request for photocopies (docket number 13) and terminate it from the Court's docket.

11 The Clerk shall close the file and enter judgment in favor of Defendants.

12 IT IS SO ORDERED.

13 DATED: November 10, 2010

14 

15 JEFFREY S. WHITE
16 United States District Judge
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY L WEBB,
Plaintiff,

Case Number: CV09-06008 JSW

CERTIFICATE OF SERVICE

v.


SHANE HERBERT et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 10, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Anthony L. Webb
#2441557
850 Bryant Street
San Francisco, CA 94103

Dated: November 10, 2010


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk